

In the Indiana Supreme Court

CASE NUMBER:

ORDER AMENDING RULES OF TRIAL PROCEDURE

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rules 12, 53.1, 63, 76 and 81 of the *Indiana Rules of Trial Procedure* are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

INDIANA RULES OF TRIAL PROCEDURE

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Rule 12. Defenses and objections -- When and how presented -- By pleading or motion -- Motion for judgment on the pleadings.

(A) **When presented.** The time allowed for the presentation of defenses and objections in a motion or responsive pleading shall be computed pursuant to the provisions of Rule 6(C).

(B) **How presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required; except that at the option of the pleader, the following defenses may be made by motion:

- (1) Lack of jurisdiction over the subject matter,
- (2) Lack of jurisdiction over the person,
- (3) Incorrect venue under Trial Rule 75, or any statutory provision. The disposition of this motion shall be consistent with Trial Rule 75,

- (4) Insufficiency of process;
- (5) Insufficiency of service of process;
- (6) Failure to state a claim upon which relief can be granted, which shall include failure to name the real party in interest under Rule 17;
- (7) Failure to join a party needed for just adjudication under Rule 19;
- (8) The same action pending in another state court of this state.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted or within twenty [20] days after service of the prior pleading if none is required. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, any of the defenses in section (B)(2), (3), (4), (5) or (8) is waived to the extent constitutionally permissible unless made in a motion within twenty [20] days after service of the prior pleading. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. ~~If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at trial any defense in law or fact to that claim for relief.~~

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Rule 53.1. Failure to rule on motion

(A) Time limitation for ruling. In the event a court fails for thirty (30) days to set a motion for hearing or fails to rule on a motion within thirty (30) days after it was heard or thirty (30) days after it was filed, if no hearing is required, upon application by an interested party, the submission of the cause may be withdrawn from the trial judge and transferred to the Supreme Court for the appointment of a special judge.

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(E) Procedure for withdrawing submission. Upon the filing by an interested party of a praecipe specifically designating the motion or decision delayed, the Clerk of the court shall enter the date and time of the filing in the Clerk's praecipe book, record the filing in the chronological case summary under the cause, and determine whether or not a ruling has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2.

(1) If the Clerk determines that the ruling or decision has not been delayed, the Clerk shall notify in writing all parties of record in the proceeding and record this determination in the chronological case summary under the cause. The Clerk's determination under this subparagraph shall not be filed with the Indiana Supreme Court.

(2) If the Clerk determines that a ruling or decision has been delayed beyond the time limitation set forth under Trial Rule 53.1 or 53.2, the Clerk shall give written notice to the judge of the cause and the Supreme Court of Indiana that submission of the cause has been withdrawn effective as of the time of the filing of the praecipe and record this determination in the chronological case summary under the cause. Accompanying the written notice to the Supreme Court of Indiana, the Clerk shall provide a copy of the praecipe filed and the chronological case summary for the case.

(F) Report to Supreme Court. When a special judge is appointed under Trial Rule 53.1 or 53.2, the judge from whom submission was withdrawn shall, within ten (10) days from receipt of the order appointing a special judge, file a written report in the Supreme Court under the cause appointing the special judge. This report shall fully state the nature of the matters held in excess of the time limitations. Additionally, the report may relate any other facts or circumstances which the judge deems pertinent.

(G) Permanent record. The Supreme Court shall maintain a permanent record of special judge appointments under Trial Rules 53.1 and 53.2.

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Rule 63. Disability and unavailability of a judge

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(B) Judge pro tempore in case of disability, unavailability, or and neglect.

~~**(B) Judge pro tempore in case of disability and neglect.** When by verified petition it shall be made to appear to the Supreme Court of Indiana that the regular or pro tempore judge of any named court in Indiana:~~

~~(1) is unable because of physical or mental infirmity to perform the duties of his office;~~

~~or~~

~~(2) fails, refuses or neglects to perform the duties of his office without good cause, the Supreme Court shall issue an order to such judge accompanied by a copy of such petition requiring him to appear and show cause why a judge pro tempore shall not be appointed to perform the duties of his office. Such order shall be served at least ten [10] days before a day set for hearing, and may be sent by registered mail by the clerk of the Supreme Court or may be served in such other manner as the court may direct. If the Supreme Court is satisfied that the proof establishes the charge, it shall appoint a full-time judge pro tempore to perform the sole duties of his office until the term of office is ended or until the judge's ability to resume his duties is established by his petition and proof at a hearing for that purpose.~~

- (1) When a judge of a court submits a verified petition and supporting proof to the Supreme Court stating that the judge is or will be unable to perform the duties of the office because of disability or other basis (e.g., order to military active duty), the Supreme Court shall promptly consider the petition.
- (2) When a person submits a verified petition to the Supreme Court stating that a judge of a court (a) is unable to perform the duties of the office because of disability or (b) has failed, refused, or neglected to perform these duties, the Supreme Court shall issue an order to the judge, accompanied by the petition, requiring the judge to show cause as to why a judge pro tempore should not be appointed to perform the duties of the office. The order shall set a date for response and indicate that the judge may request a hearing. The order may include a date for such a hearing on or after the date set for response. The order shall be served at least ten (10) days before the date set for response.
- (3) If the Supreme Court is satisfied that a petition submitted under subsection (1) or (2) should be granted, it shall appoint a full time judge pro tempore to perform the duties of the office until (a) the term of the office is ended, (b) the office becomes vacant, or (c) the judge's ability to resume those duties is established.
- (4) A judge who seeks to resume the duties of the office shall submit a verified petition and supporting proof to the Supreme Court. The judge may request a hearing on the petition.
- (5) The Supreme Court may order a judge who has submitted a petition under subsection (1) to demonstrate that the judge is or remains unable to perform the duties of the office.

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Rule 76. Change of venue

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(C) In any action except criminal no change of judge or change of venue from the county shall be granted except within the time herein provided. Any such application for change of judge (or change of venue) shall be filed not later than ten [10] days after the issues are first closed on the merits. Except:

- (1) in those cases where no pleading or answer may be required to be filed by the defending party to close issues (or no responsive pleading is required under a statute), each party shall have thirty [30] days from the date the same is placed and entered on the chronological case summary of the court;

(2) in those cases of claims in probate and receivership proceedings and remonstrances and similar matters, the parties thereto shall have thirty [30] days from the date the same is placed and entered on the chronological case summary of the court;

(3) if the trial court or a court on appeal orders a new trial, or if a court on appeal when a new trial otherwise remands a case is granted such that a further hearing and receipt of evidence are required to reconsider all or some of the issues heard during the earlier trial, whether the result of an appeal or not, the parties thereto shall have ten [10] days from the date the order of the trial court is entered or the order of the court on appeal is certified ~~granting the new trial is entered on the record of the trial court;~~

(4) in the event a change is granted from the judge or county within the prescribed period, as stated above, a request for a change of judge or county may be made by a party still entitled thereto within ten [10] days after the special judge has qualified or the moving party has knowledge the cause has reached the receiving county or there has been a failure to perfect the change. Provided, however, this subdivision (4) shall operate only to enlarge the time allowed for such request under such circumstances, and it shall not operate to reduce the period prescribed in subdivisions (C), (C)(1), (C)(2), (C)(3);

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Rule 81. Local court rules

(A) Authority. Courts may regulate local court and administrative district practice by adopting and amending in accordance with this Rule local and administrative district rules not inconsistent with – and not duplicative of – these Rules of Trial Procedure or other Rules of the Indiana Supreme Court. Courts are strongly encouraged to adopt a single set of local rules for use in all courts of record in a county and will be required to do so after January 1, 2007. The single set may reflect different practices due to geographic, jurisdictional and other variables. Courts shall not use standing orders (that is, generic orders not entered in the individual case) to regulate local court or administrative district practice. Local and administrative district rules requiring approval of the Indiana Supreme Court or the Division of State Court Administration are subject to the provisions of this rule.

(B) Notice and comment.

(1) When a court or administrative district proposes to adopt or amend local or administrative district rules, it shall give notice to the bar and public of the content of the proposal, the time period for the bar and public to comment, the address to which comments should be sent, and the proposed effective date. Notice shall include, but not be limited to, transmitting the proposal to the officers of any local county bar association.

(2) The court shall also transmit the proposal to the county clerk and to the Division of State Court Administration in digital format. The county clerk shall post the proposal in the county clerk's office(s) and on the county clerk's website, if any, and the Division of State Court Administration shall post the proposal on the Indiana Judicial Website for public inspection and comment. The court and the Division of State Court Administration shall receive comments for not less than ~~forty-five (45)~~ thirty (30) days.

(C) Schedule. The Division of State Court Administration shall establish and publish a uniform annual schedule, similar to the schedule for proposed Supreme Court rules under Rule 80(D), for publishing proposed local and administrative district rules, receiving comment, adopting rules, and the effective date of adopted rules.

(D) Exceptions to the schedule. If a court finds that there is good cause to deviate from the schedule established by the Division of State Court Administration, the court or administrative district may adopt or amend local or administrative district rules at other times ~~and without notice and opportunity for comment~~. However, a local or administrative district rule shall not take effect unless it has first been posted for thirty (30) days in the county clerk's office(s) and on the county clerk's website, if any, and on the Indiana Judicial Website. The court promptly thereafter shall provide opportunity to comment in the manner provided in subsection (B)(1) above.

(E) Style, format, and numbering. The Division of State Court Administration shall establish and publish a standard format for drafting and amending local and administrative district rules. The format shall include a uniform numbering system which, to the extent practicable, corresponds to the numbering of these Rules of Trial Procedure and other Rules of the Indiana Supreme Court.

(F) Adopted Rules. The court shall cause adopted rules and amendments to be placed in the Record of Judgments and Orders, shall cause the county clerk to post them in the county clerk's office(s) and on the county clerk's website, if any, for public inspection, and shall transmit a copy of the rules in digital format to the Division of State Court Administration for posting on the Indiana Judicial Website.

(G) Availability of local and administrative district rules. All local and administrative district rules, as amended and with any appendices thereto, shall be compiled into one document, which shall be posted and available in the clerk's office at

all times for public inspection and on the county clerk's website, if any. They shall be available free of charge on the Indiana Judicial Website.

(H) Suspension of local or administrative district rules. In an individual case the court, upon its own motion or the motion of any party, may waive, suspend or modify compliance with any local or administrative district rule if the interests of justice so require. All such waivers, suspensions or modifications shall be entered in the Chronological Case Summary of the case.

(I) Transition. To continue in effect local and administrative district rules promulgated before the effective date of this Rule, the court shall (1) renumber such rules according to the uniform numbering system established by the Division of State Court Administration under subsection (E) above, (2) cause such rules to be posted and available in the clerk's office as required by subsection (G) above, and (3) transmit a copy of such rules in digital format to the Division of State Court Administration for posting on the Indiana Judicial Website. By January 1, 2007, local rules must be in compliance with the terms of this Rule.

(J) Periodic review and update. Courts and administrative districts should review periodically and change local and administrative district rules as required by changes in statutes, case law, or these Rules of Trial Procedure or other Rules of the Indiana Supreme Court.

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These amendments shall take effect January 1, 2007.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of

all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the circuit court are directed to send a copy of this order to all the judges, including any city, town, and small claims court judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this _____ day of August, 2006.

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.